

**To:** Fortin, Denise[Fortin.Denise@epa.gov]  
**Cc:** Thomas, Colleene (Baldwin)[Colleene\_Thomas@baldwin.senate.gov]; Beckmann, Ronna Erin[beckmann.ronna@epa.gov]; Deamer, Eileen[deamer.eileen@epa.gov]  
**From:** Helbick, Mike (Baldwin)  
**Sent:** Tue 12/20/2016 8:39:00 PM  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Denise,

Thank you for your call this morning, your email below, and EPA's willingness to respond to folks who express concern regarding this mine!

Have a great holiday season,

Mike

**Mike Helbick**

**Office of U.S. Senator Tammy Baldwin**

633 W. Wisconsin Avenue | Suite 1920

Milwaukee, Wisconsin 53203

[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)

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**From:** Fortin, Denise [mailto:Fortin.Denise@epa.gov]  
**Sent:** Tuesday, December 20, 2016 11:35 AM  
**To:** Helbick, Mike (Baldwin) <Mike\_Helbick@baldwin.senate.gov>  
**Cc:** Thomas, Colleene (Baldwin) <Colleene\_Thomas@baldwin.senate.gov>; Beckmann, Ronna Erin <beckmann.ronna@epa.gov>; Deamer, Eileen <deamer.eileen@epa.gov>  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Good talking to you this morning, Mike.

As we discussed, EPA has received comments from a number of individuals and from the Menominee Indian Tribe of Wisconsin expressing concerns about the proposed Aquila Back Forty Mine. We have responded to the commenters by acknowledging receipt of their comments and explaining Michigan's and EPA's roles in the various permitting processes. The comments from the tribe were extensive, including more than 20 pages of concerns. We have not responded to this letter, but have reached out to the tribe to better understand its issues.

We will continue to respond to inquiries received, including those from people and groups in Wisconsin. At a minimum, we will acknowledge receipt of the comments and describe the permitting process.

Please let me know if you need anything else.

Happy holidays!

Denise

Denise Fortin

Congressional Liaison

Office of Regional Administrator

U.S. Environmental Protection Agency

312-886-9859

**From:** Helbick, Mike (Baldwin) [[mailto:Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)]

**Sent:** Thursday, December 15, 2016 10:18 AM

**To:** Fortin, Denise <[Fortin.Denise@epa.gov](mailto:Fortin.Denise@epa.gov)>

**Cc:** Thomas, Colleene (Baldwin) <[Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>; Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>

**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Thank you very much, Denise! This does help me understand the process.

I guess the only outstanding concern that I have is for constituents in WI who want to express concern on this mine. MDEQ doesn't represent them, and DNR doesn't have a role, so EPA is the only place they can go to express concern – is it fair to say that if folks submit concerns to EPA, that EPA will respond and will consider those concerns throughout the process?

**Mike Helbick**

**Office of U.S. Senator Tammy Baldwin**

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**From:** Fortin, Denise [<mailto:Fortin.Denise@epa.gov>]

**Sent:** Wednesday, December 14, 2016 3:50 PM

**To:** Helbick, Mike (Baldwin) <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>

**Cc:** Thomas, Colleene (Baldwin) <[Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>; Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>

**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Hey Mike:

CWA Section 404 wetlands dredge and fill permits in Michigan are issued by the State, specifically by MDEQ. Although the federal permitting program is delegated to the State, EPA retains responsibility for oversight of the State's program, including reviewing significant proposed permits.

If EPA objects to a proposed permit, MDEQ must address the objection, or deny the permit. If the State neither denies the permit nor satisfies EPA's objection, authority to issue the CWA 404 permit transfers to the U.S. Army Corps of Engineers, by operation of law.

After receiving an EPA objection, MDEQ or another interested party can request that EPA hold a hearing on the objection. If a hearing is held, that would be the appropriate time for interested parties to submit comments to EPA. However, if someone wants convey comments and concerns to EPA outside of that process, these may be sent to Peter Swenson, Chief Watersheds and Wetlands Branch, at [Swenson.peter@epa.gov](mailto:Swenson.peter@epa.gov). Because MDEQ is the permitting authority in the first instance, it is most important that comments be sent to the MDEQ.

A similar oversight and objection process applies to NPDES permits under CWA Section 402. Under Section 402, however, if MDEQ does not satisfy an EPA objection regarding a proposed NPDES permit, permitting authority transfers to EPA, not to the Corps.

The items in the November 2, 2016 letter are recommendations that EPA strongly believes would improve the protections to sensitive species in the Menominee River, provide for additional environmental monitoring data which would be accessible by the public, and improve the accountability of the permittee and the enforceability of the NPDES permit. MDEQ has indicated informally that they plan to address our comments.

MDEQ is required to forward to EPA the proposed permit for EPA's review, after the close of the public comment period, per our Memorandum of Agreement with MDEQ that governs our permit review and oversight process. At that time EPA will review the proposed permit, the comments MDEQ received during the public comment period, and MDEQ's responses to those comments. Once we receive the proposed permit EPA will have the opportunity to (1) let the permit move forward without comment, (2) provide additional comments, or (3) file an objection to the permit being issued if the permit fails to implement the requirements of the CWA. If MDEQ is unable to satisfy our objections, the authority to issue the NPDES permit passes to EPA.

I hope this information clarifies the two processes. Please let me know if you need anything

else. We can always schedule a call if you would like to discuss further.

Thanks,

Denise

Denise Fortin

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Office of Regional Administrator

U.S. Environmental Protection Agency

312-886-9859

**From:** Fortin, Denise

**Sent:** Monday, December 12, 2016 4:43 PM

**To:** 'Helbick, Mike (Baldwin)' <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>; Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>

**Cc:** Thomas, Colleene (Baldwin) <[Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)>

**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Thanks for your email, Mike. I should have some additional info for you tomorrow.

Denise Fortin

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**From:** Helbick, Mike (Baldwin) [[mailto:Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)]

**Sent:** Monday, December 12, 2016 1:17 PM

**To:** Fortin, Denise <[Fortin.Denise@epa.gov](mailto:Fortin.Denise@epa.gov)>; Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>  
**Cc:** Thomas, Colleene (Baldwin) <[Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)>  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Denise and all,

Thank you for all the great information! I just have some follow-up questions:

- Even though NPDES and CWA are exercised by MDEQ and EPA only has an oversight role, EPA has been in contact with MDEQ on permitting for this project and seemingly is the cause of the company's withdrawal of their CWA permit application (per the EPA letter of August 15). It appears that EPA does have an active role in this, even if we don't consider it a "direct" role. If constituents believe there are issues that arise during this permitting process, or if the permits are granted and people want to object, can you share information on how they may convey concerns to EPA or object to permits granted? We just want to make sure that constituents know all avenues open to them to relay their concerns.
- Also, the EPA letter of 11/2/16 regarding the EPA's review of the Draft NPDES Permit has recommendations – are these binding or voluntary? The letter directs MDEQ to forward the proposed permit, once prepared, to EPA. Does this mean that EPA plans to respond to MDEQ with official, concrete approval/disapproval before MDEQ issues the permit?

Any information you can share will be greatly appreciated.

Thank you,

Mike

**Mike Helbick**

**Office of U.S. Senator Tammy Baldwin**

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**From:** Fortin, Denise [<mailto:Fortin.Denise@epa.gov>]

**Sent:** Wednesday, December 7, 2016 3:25 PM

**To:** Thomas, Colleene (Baldwin) <[Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)>; Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>; Helbick, Mike (Baldwin) <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>

**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Colleene & Mike:

A decision by a local unit of government to prohibit the siting of a facility within a source water protection area would be taken pursuant to the local unit of government's own power to regulate land use. SDWA does not confer any such power on local units of government. A local prohibition would be enforced by the local government and would not trigger any federal response under SDWA.

SDWA contains provisions related to source water protection, including provisions that relate to state requirements to conduct assessments of source water quality and state or local efforts to create voluntary, incentive-based protection partnerships. (42 U.S.C. 300j-13 and 300j-14.)

Please let me know if you need anything else.

Thanks,

Denise

Denise Fortin

Congressional Liaison

Office of Regional Administrator

U.S. Environmental Protection Agency

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**From:** Thomas, Colleene (Baldwin) [[mailto:Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)]  
**Sent:** Monday, December 05, 2016 3:37 PM  
**To:** Fortin, Denise <[Fortin.Denise@epa.gov](mailto:Fortin.Denise@epa.gov)>; Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>;  
Helbick, Mike (Baldwin) <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>; Beckmann, Ronna Erin  
<[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Thanks Denise.

**From:** Fortin, Denise [<mailto:Fortin.Denise@epa.gov>]  
**Sent:** Monday, December 5, 2016 4:23 PM  
**To:** Thomas, Colleene (Baldwin) <[Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)>; Deamer, Eileen  
<[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>; Helbick, Mike (Baldwin) <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>;  
Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

FYI, Colleene - we're checking with our SDWA attorneys on your follow-up questions. I should have answers for you tomorrow.

Denise

Denise Fortin

Congressional Liaison

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**From:** Thomas, Colleene (Baldwin) [[mailto:Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)]  
**Sent:** Thursday, December 01, 2016 2:49 PM  
**To:** Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>; Fortin, Denise <[Fortin.Denise@epa.gov](mailto:Fortin.Denise@epa.gov)>; Helbick, Mike (Baldwin) <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Thanks Eileen, this is helpful.

If a local ordinance was passed to prohibit the citing of a facility within a source water protection area, would that invoke federal protections of any sort (ie under SDWA)? Or are you suggesting it would be the community's own regulatory authority that would protect the water? If it is the case that SDWA can be invoked in that way, can you share info on that process? And do you know if a community in a state other than the state in which the pollutant originates can leverage that protection?

Thanks,

Colleene

**From:** Deamer, Eileen [<mailto:deamer.eileen@epa.gov>]  
**Sent:** Thursday, December 1, 2016 3:44 PM  
**To:** Thomas, Colleene (Baldwin) <[Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)>; Fortin, Denise <[Fortin.Denise@epa.gov](mailto:Fortin.Denise@epa.gov)>; Helbick, Mike (Baldwin) <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Colleene - I checked in with our drinking water branch, and there is nothing in the SDWA that requires permit reviews or prohibits adverse discharges to a community's water source. For example, there are discharges to Lake Michigan – which supplies drinking water to millions of people in bordering areas. Source water protection is voluntary, unless the community passes a local ordinance prohibiting the citing of a facility within its source water protection area.

Thanks,

Eileen

**From:** Thomas, Colleene (Baldwin) [[mailto:Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)]  
**Sent:** Thursday, December 01, 2016 11:09 AM  
**To:** Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>; Fortin, Denise <[Fortin.Denise@epa.gov](mailto:Fortin.Denise@epa.gov)>; Helbick, Mike (Baldwin) <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

That does help, thank you.

My question still stands on whether there are Safe Drinking Water Act provisions that would also come in to play given that communities source their water from the rivers that could potentially be impacted by discharge? Perhaps source protection provisions?

If a call is easier for that, I'm free before 4:30 CST.

Thanks,

Colleene

**From:** Deamer, Eileen [<mailto:deamer.eileen@epa.gov>]  
**Sent:** Thursday, December 1, 2016 11:47 AM  
**To:** Thomas, Colleene (Baldwin) <[Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)>; Fortin, Denise <[Fortin.Denise@epa.gov](mailto:Fortin.Denise@epa.gov)>; Helbick, Mike (Baldwin) <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Hi Colleene –

Denise is out today so I followed up on your question below.

The company has withdrawn its application, which ends the review process. If, as we expect, the company submits a new application, the process and timelines would begin again.

Does that help? We're happy to have a call with you today if you need additional details.

Thanks,

Eileen Deamer

(312) 886-1728

**From:** Thomas, Colleene (Baldwin) [[mailto:Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)]  
**Sent:** Wednesday, November 30, 2016 6:00 PM  
**To:** Fortin, Denise <[Fortin.Denise@epa.gov](mailto:Fortin.Denise@epa.gov)>; Helbick, Mike (Baldwin) <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>; Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Hi Denise,

Thanks for this quick reply! In the second document, dated 8/15/16 on the CWA permit, the letter lays out requirements that must be met under the CWA if the permit is allowed to proceed, and says that if they are not met in 90 days, authority over permit issuance would transfer to the Army Corps. By my count we are past 90 days—can you help us understand what the status of MDEQ's response is?

The Marinette River is a source of drinking water for several thousand people. Does anything in the Safe Drinking Water Act or other laws require certain per-permit issuance reviews or restrict discharges that could endanger that drinking water source?

Thanks,

Colleene

**From:** Fortin, Denise [<mailto:Fortin.Denise@epa.gov>]  
**Sent:** Wednesday, November 30, 2016 4:37 PM  
**To:** Helbick, Mike (Baldwin) <[Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)>; Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>  
**Cc:** Thomas, Colleene (Baldwin) <[Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)>  
**Subject:** RE: Sen. Baldwin: Inquiry -- Carlson

Thanks, Mike. I hope you had a great holiday, too!

I've spoken with staff in both our NEPA and Water Divisions and EPA does not have a direct role in this project. All permit decisions rest with MDEQ or MI DNR. The federal Clean Water Act permit responsibilities under NPDES, Section 401 and Section 404 are exercised by MDEQ with EPA oversight. Likewise, MDEQ has federal Clean Air Act permit responsibilities with EPA oversight. For your information, I've attached EPA's recent oversight comment letters to MDEQ on NPDES, 404, and air.

Also, there are no federal agency decisions on this mine project that triggers NEPA. I've attached a reply to a letter from a citizen who requested an environmental impact statement be prepared under NEPA. This letter includes cc's to MDEQ staff who would be the appropriate state contacts for this mine.

Hope this is helpful. Please let me know if you need anything else.

Thanks,

Denise

Denise Fortin

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**From:** Helbick, Mike (Baldwin) [[mailto:Mike\\_Helbick@baldwin.senate.gov](mailto:Mike_Helbick@baldwin.senate.gov)]

**Sent:** Wednesday, November 30, 2016 10:30 AM

**To:** Fortin, Denise <[Fortin.Denise@epa.gov](mailto:Fortin.Denise@epa.gov)>; Deamer, Eileen <[deamer.eileen@epa.gov](mailto:deamer.eileen@epa.gov)>; Beckmann, Ronna Erin <[beckmann.ronna@epa.gov](mailto:beckmann.ronna@epa.gov)>

**Cc:** Thomas, Colleene (Baldwin) <[Colleene\\_Thomas@baldwin.senate.gov](mailto:Colleene_Thomas@baldwin.senate.gov)>

**Subject:** Sen. Baldwin: Inquiry -- Carlson

Denise and all,

I hope you had a great Thanksgiving. ☺

Attached is a constituent's concerns regarding the Back Forty Gold Mine in MI. A couple quick questions:

- 1) What, if any, role does EPA play in this permitting process (is there any sign-off at all needed by EPA on this permitting or otherwise)?
- 2) How may concerned constituents object to permitting via EPA (and also MI DEQ / DNR, if you happen to know – or if you can provide contacts for relevant folks in those agencies, that would be great)?

Thank you very much,

Mike

**Mike Helbick**

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